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Ontario

April 16, 2003

Honourable Tony Clement
Minister of Health and Long-Term Care
Suite M1-57, Macdonald Block
900 Bay Street
Toronto ON
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Dear Minister,

Pursuant to the Ontario Human Right Commission's (the "Commission's") mandate under section 29 of the Ontario *Human Rights Code* (the "*Code*") to inquire into incidents of and conditions leading to tension or conflict based on prohibited grounds of discrimination, I am writing with regard to the Ministry of Health and Long-Term Care's (the "Ministry's") "West Nile Virus Action Plan" announced on March 22, 2003.

As indicated in the Ministry's Backgrounder entitled "Eves government unveils 'made in Ontario' West Nile virus action plan," the Ministry plans to implement "mosquito control techniques" as part of a seven-step approach developed to attack the disease. These techniques include the use of larvicides and possibly adulticides as measures to control the mosquito population.

It is my understanding that the Ministry is leaving the decision on whether to use pesticides, including adulticides, up to municipalities. It is also my understanding that there are no province-wide guidelines in place to ensure that mosquito control plans are implemented consistently, or in accordance with any set protocol.

Halting the spread of the West Nile virus is an important objective, and one of consequence to all Ontarians. However, concerns have been expressed to me about the Ministry's proposed strategy of using chemical agents, particularly adulticides, as part of its strategy to deal with this problem. Apart from reservations that the general population may have about the unknown effects of using chemical sprays, also referred to as "fogging" agents, on areas inhabited by the public, the use of such agents is of particular concern to persons identified by *Code* grounds such as persons with disabilities, parents of young children, and pregnant women. In particular, the use of these chemicals would likely have an adverse impact on individuals with environmental sensitivity.

Environmental sensitivity (also referred to as multiple chemical sensitivities, cerebral allergies, chemical-induced immune dysfunction, etc.) is triggered by the exposure to common environmental chemicals in lower levels than those that tend to affect the general public.

The *Code* provides that every person has a right to equal treatment with respect to services without discrimination because of disability. It is the Commission's policy position, as outlined in its *Policy and Guidelines on Disability and the Duty to Accommodate*, that environmental sensitivity is a disability and is thus protected under the *Code*. As such, the Ministry, as well as any municipality responsible for implementing the use of chemical insecticides, has a duty to provide accommodation to persons with environmental sensitivity. Failure to do so may contravene the *Code*.

When considering the use of chemical agents as a mosquito control technique, I would ask the Ministry and municipalities to be aware of their human rights obligations and to consider the effect of their plans on persons protected by the *Code*.

Please be advised that in keeping with the Commission's commitment to public accountability and its duties in serving the people of Ontario, this letter may be made public.

If you have any questions or wish to discuss this issue further, please do not hesitate to contact me or my office.

Yours truly,

Keith C. Norton, Q.C., B.A., LL.B.
Chief Commissioner